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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,563	03/15/2004	Anthony M. Iannelli	US-0204-I	9830

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/800,563	<b>Applicant(s)</b> IANNELLI, ANTHONY M.	
	<b>Examiner</b> Chapman E. Jeanette	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.  
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
 4a) Of the above claim(s) 15 and 18-21 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-14, 16 and 22 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |




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Claims 1-2, 5-14, 16 and 22 (is/are) rejected under 35 U.S.C. 103(a) as being unpatentable over by Iannelli (5640809) in view of Kuhn's (6161338). Iannelli discloses a cover section for a roof gutter. The cover section is fashioned to extend longitudinally in an overlying relation to a length of the gutter. The cover section comprises:

- A top portion extending forwardly from a rear edge of the cover section; ~~see annotations on patent copy~~
- A front wall, adjacent ref. no.s 34/30, extending downwardly from the top portion
- A ledge 45 extending horizontally from the Lower section of the front wall
- At least one longitudinally extending ridge 35 formed in the top portion
- The cover is integrally and unitarily formed from a single sheet of aluminum having a thickness between .022 and .026 inches which is within the recited range .016-.032 inches
- The top portion is formed with an imperforate rear section, a midsection wherein the at least one longitudinally extending ridge and an imperforate front section Page 5 . The mid section is formed with a pair of relatively spaced apart , longitudinally extending ridges
- The lower section of the front wall includes a downwardly and rearwardly inclined splashguard 22; the splashguard extends downwardly and rearwardly a distance. The exact distance such as .25-.75 and less than the horizontal extend of the ledge has been considered a matter of choice; one of ordinary skill in the art would have appreciated all of the possible locations/measurements to extend the splash guard permitting its intended purpose and function.

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- The splashguard is provided with a plurality of apertures; see last 5 lines of column 3 and all of column 4
- the horizontal ledge is provided with a plurality of apertures or pods 33 see figure 2b
- The horizontal ledge is provided with a raised front lip 40 extending generally upwardly a distance. The distance is not less than one-half of the horizontal extend of the ledge. Such a measurement has been considered a matter of choice. One of ordinary skill in the art would have appreciated all of the possible measurements in which to construct the lip permitting its intended purpose and function of the cover device
- The lip mounting surface being continuous with and generally vertically aligned with the ledge; see figure 2A
- The gutter lip mounting surface 41 extends generally rearwardly from a front portion of the horizontal ledge; see annotations on patent copy
- A space is provided between the horizontal ledge and the gutter lip mounting surface 26; see figure 2a.

Measurements such as the vertical distance between the upper end of the front wall and the horizontal ledge and the size of the apertures has been considered a matter of procedural and routine design; one of ordinary skill in the art would have appreciated the proper distance and the proper size to make the apertures enabling the intended function of the cover.

Iannelli lacks the apertures commonly known in gutters for drainage as shown by Kuhns. Kuhns shows the apertures 126/130 on the <sup>Cover</sup> Over section to permit the drainage of water in the gutter. The location of the ridges has been considered a matter of choice; one of ordinary skill in the art would have appreciated placing the openings in any location that would permit the intended function of the cover section. Nonetheless, Page 6 kuhns discloses a top portion is formed with an imperforate rear section 400/422, a midsection wherein at least one longitudinally extending ridge, adjunct ref no. 424 and 430, and the plurality of apertures 126/130, are disposed and an imperforate horizontal disposed front section. The apertures are disposed in front and behind the two ridges.

In view of the above it would have been obvious to one of ordinary skill in the art to include the apertures to aid in drainage of water into the gutter as shown by Kuhn. Claims 3-4 (is/are) rejected under 35 U.S.C. 103(a) as being unpatentable over the above prior art as applied to claim 1 and further in view of Albracht (5557891).

Iannelli discloses a top portion is provided with a clipped ear edge corner at least one end of the hemmed rear edge. Albracht shows the above structure; see figures 12 and 13. It would have been obvious to one of ordinary skill in the art to modify Iannelli to include the clipped and hemmed edge.

Applicant's arguments filed June 9, 2005 have been fully considered but they are not persuasive. Applicant is arguing slight changes in configuration, shape and measurements. The prior art discloses all of the claimed features except for those slight modifications dealing with measurement and configuration. There is no disclosure emphasizing the importance of these measurements, configurations or limitations.

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There is no disclosure with emphasis on specific measurements; the se limitation must be included for the cover to function is a specific manner or the specific measurement causes a specific function. There is no disclosure in the specification regarding criticality which significantly affects the overall function of the cover section. There is no disclosure detailing the measurements importance to the function of the cover section, splash guard and lip. At present, the inclusion of the limitations appear to be an immediate reaction to the examiner's rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other Fri. . of. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see [h/p://pair-direct.uspto.gov](http://pair-direct.uspto.gov). Should you

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have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 861217-9197 (toll-free).

  
Jeannette Chapman  
Primary Examiner